APPENDIX A

United States Court of Appeals, Fifth Circuit.

Nos. 71-2948, 71-3192.

UNITED STATES of America, Plaintiff-Appellee,
v.

Martin SKLAROFF and Jesse Sklaroff,
Defendants-Appellants.

UNITED STATES of America, Plaintiff-Appellee,
v.

Martin SKLAROFF, Jesse Sklaroff, and Barney Tillman Berry, Defendants-Appellants.

Jan. 17, 1975.

First and second defendants were convicted before the United States District Court for the Southern District of Florida, at Miami, Cabot, J. (Deceased), and William O. Mehrtens, J., of violating statute prohibiting the transmission of wagering information and first, second and third defendants were convicted before the United States District Court for the Northern District of Georgia, Newell Edenfield, Chief Judge, of conspiracy to violate statute prohibiting transmission of wagering information and on substantive counts charging violation of the statute. The defendants appealed and the appeals were consolidated. The Court of Appeals, Bell, Circuit Judge, held that the

evidence was sufficient to support the convictions; that there was no error with respect to issuance of warrant to search third defendant's business premises; that the third defendant was not prejudiced by corrected charge on voice identification; that the statute prohibiting the transmission of wagering information included the recipient of information in the bookmaking business which assists in the placing of bets and wagers; that the provisions of the Omnibus Crime Control and Safe Streets Act of 1968 which authorize wire interceptions are constitutional; that the procedures used in obtaining the interception order were not deficient; that the order itself was not legally insufficient and that the Government did not fail to comply with requirements of the order once it was obtained.

Affirmed.

1. Telecommunications — 363

Evidence was sufficient to support convictions for use of a wire communication facility for the transmission in interstate commerce of bets or wagers and of conspiracy to transmit wagering information. 18 U.S.C.A. § 1084.

2. Gaming — 60

Warrant to search third defendant's Atlanta, Georgia, premises used in the business of bookmaking was properly issued. 18 U.S.C.A. § 1084.

3. Criminal Law — 818

Where trial court corrected its charge as to the issue of voice identification after objection by third defendant's

counsel, possible prejudice to third defendant was obviated by the corrected charge in prosecution for transmission of wagering information. 18 U.S.C.A. § 1084.

4. Telecommunications — 362

Statute, providing that whoever being engaged in the business of betting or wagering knowingly uses the wire communication facility for the transmission in interstate or foreign commerce of bets or wagers or information assisting in the placing of bets or wagers on any sporting event or contest, or for the transmission of a wire communication which entitled recipient to receive money or credit as result of bets or wagers, or for information assisting in the placing of bets or wagers, shall be subject to fine and imprisonment, embraces the recipient of information in the bookmaking business which assists in the placing of bets and wagers. 18 U.S.C.A. § 1084.

5. Telecommunications — 492

Provisions of the Omnibus Crime Control and Safe Streets Act of 1968 which authorize the interception of wire communications are constitutional. 18 U.S.C.A. §§ 2510-2520; U.S.C.A.Const. Amends. 1, 4, 5.

6. Telecommunications — 496

Where application for authorization to intercept wire communications contained clear description of the four telephones, including a diagram of their location at Miami International Airport, clerical errors in one digit in one telephone number and in exchange number "691" being

stated as "961" as to another of four telephone numbers did not render the application deficient. 18 U.S.C.A. §§ 2510-2520.

7. Telecommunications — 496

Record in prosecution for unlawful interstate transmission of wagering information by use of wire communication facility established that federal agents had probable cause to intercept telephone conversations, that there was no deficiency from the standpoint of particularity as to description of conversations to be intercepted, the duration of the intrusion or a showing of need for the interceptions and that other investigative procedures appeared to be unlikely to succeed. 18 U.S.C.A. §§ 1084, 2510-2520.

8. Telecommunications — 496

Where the Government accounted for delay of 14 days in delivering recordings of wire interceptions to the judge issuing the interception order by showing that the recordings remained in the FBI evidence room for seven days and that the additional seven days were used in the preparation of search warrants, here was no showing that the integrity of the interceptions was in any way violated and there was no showing of prejudice to the defendants, the Government did not violate wiretap statute by failing to deliver immediately the recordings of the interceptions to the judge issuing the interception order at the end of the period of the order. 18 U.S.C.A. §§ 2516(1), 2518, 2518 (8)(a).

9. Telecommunications — 496

Purpose of provision of wiretap statute requiring the Government to deliver immediately the recordings of the interceptions to the judge issuing the interception order at the end of the period of the order is to safeguard the recordings from editing or alteration. 18 U.S.C.A. § 2518(8)(a).

10. Telecommunications — 496

Order, which authorized interception of telephone conversations, was not invalidated because it was represented to the issuing judge that the application had been authorized by named Assistant Attorney General, whereas the application had been authorized by the Attorney General, nor was the order invalidated by the failure to advise the issuing judge that a deputy Assistant Attorney General, in an authorized ministerial act, had signed the Assistant Attorney General's name. 18 U.S.C.A. § 2516(1).

Appeals from the United States District Court for the Southern District of Florida and the Northern District of Georgia.

Before WISDOM and BELL, Circuit Judges, BREWSTER, District Judge.

BELL, Circuit Judge:

Defendants Martin and Jesse Sklaroff were convicted in the Southern District of Florida on charges of violating

18 U.S.C.A. § 1084.[1] They were also convicted in the Northern District of Georgia, along with defendant Berry, of conspiring to violate § 1084, and on substantive counts charging violation of § 1084.

The essence of the charges was the business of bookmaking and the use of the telephone by the Sklaroffs to transmit information assisting in the placing of bets and wagers to Berry and a co-defendant Dudley in Atlanta, and to others in cities outside Florida. (Dudley later pleaded guilty.) The appeals from these convictions were consolidated and we now affirm the convictions.

There are some assignments of error common to the three defendants. These center on telephone conversations intercepted by wiretaps. The sufficiency of the evidence is also drawn into the question by all defendants. In addition, Berry claims error with respect to the issuance of a search warrant, the court's charge on the question of voice identification, and the court's construction of § 1084 to include the recipient of information by transmission which assists in placing bets and wagers.

[1-3] Assuming the admissibility of the evidence procured by and through the wire interceptions, to be dis-

[1] § 1084. Transmission of wagering information; penalties

(a) Whoever being engaged in the business of betting or wagering knowingly uses a wire communication facility for the transmission in interstate or foreign commerce of bets or wagers or information assisting in the placing of bets or wagers on any sporting event or contest, or for the transmission of a wire communication which entitles the recipient to receive money or credit as a result of bets or wagers, or for information assisting in the placing of bets or wagers, shall be fined not more than $10,000 or imprisoned not more than two years, or both.

cussed hereinafter, there is no merit whatever in the contention that the evidence was insufficient to warrant the convictions of the defendants. We also find no error with respect to the issuance of the warrant to search Berry's business premises in Atlanta. See United States v. Ventresca, 1965, 380 U.S. 102, 85 S.Ct. 741, 13 L.Ed.2d 684. After objection by Berry's counsel, the trial court corrected its charge as to the issue of voice identification and we hold that any possible prejudice to Berry was obviated by the corrected charge.

[4] There is no merit in the contention that § 1084 does not include the recipient of information in the bookmaking business which assists in the placing of bets and wagers. Berry relies on United States v. Stonehouse, 7 Cir., 1971, 452 F.2d 455 but see United States v. Sellers, 5 Cir., 1973, 483 F.2d 37, where we aligned our court with Sagansky v. United States, 1 Cir., 1966, 358 F.2d 195; and Tomeo v. United States, 10 Cir., 1972, 459 F.2d 445, in holding that the statute embraces the recipient in the transmission process.

The central questions presented are in connection with wire interceptions. United States District Judge W. O. Mehrtens authorized FBI agents to intercept telephone conversations between the Sklaroffs and others originating from four specified pay telephones located in the public area of the Miami International Airport. The interceptions were authorized for a period of seven days from the date of the order.

These telephones were allegedly being used by the Sklaroffs for the transmission in interstate commerce of bets and wagers, and of information assisting in the placing of bets and wagers in violation of 18 U.S.C.A. § 1804.

In addition to intercepting the conversations, one FBI agent was concealed in a refrigerator crate near the four telephone booths, and was able to take motion pictures of the Sklaroffs from that vantage point. There is little dispute in the proof as to use of the telephones by the Sklaroffs and the times involved. Many calls were intercepted and some of these led to Berry and Dudley in Atlanta.

[5] It is first urged that Title III of the Omnibus Crime Control and Safe Streets Act of 1968, 18 U.S.C.A. §§ 2510-2520, is unconstitutional. The argument for unconstitutionality is that (1) wire interceptions authorized by the Act are so inherently broad and the intrusions allowed so indiscriminate as to necessarily violate the Fourth Amendment; (2) an order authorizing the interception of wire communications is for the purpose of obtaining testimonial evidence of crimes and therefore violates the Fourth and Fifth Amendments; (3) the interceptions authorized by the Act violate First Amendment rights of free speech; (4) the interceptions authorized constitute a search and thus a defendant is entitled to notice prior to entry, and (5) the Act is unconstitutional in that it authorizes interceptions without probable cause being established. Taken together, it is said that it is impossible to have a constitutionally valid statute authorizing wire interceptions.

The arguments made in support of the claim that the statute is unconstitutional have been addressed by one or more of our sister circuits and, without exception, they have upheld the constitutionality of the Act. See, e.g., United States v. Tortorello, 2 Cir., 1973, 480 F.2d 764; United States v. Cafero, 3 Cir., 1973, 473 F.2d 489; United States v. Bobo, 4 Cir., 1973, 477 F.2d 974; United States v. Cox, 8 Cir., 1972, 462 F.2d 1293; Cox v. United States, 10 Cir., 1971, 449 F.2d 679. One teaching of Berger v. New

York, 1967, 388 U.S. 41, 87 S.Ct. 1873, 18 L.Ed.2d 1040; and Katz v. United States, 1967, 389 U.S. 347, 88 S.Ct. 507, 19 L.Ed.2d 576, is that a statute permitting wire interceptions under narrow restrictions and carefully circumscribed conditions may be constitutional. We join in holding that Title III, §§ 2510-2520, meets the test of Berger and Katz.

The defendants also urge that the procedures used in obtaining the interception order were deficient; that the order itself was legally insufficient; and that the government failed to comply with the requirements of the order once it was obtained.

[6] One alleged defect or deficiency in the application for the order is said to lie in the fact of an error in one digit in one telephone number, and in exchange number 691 being stated as 961 as to another of the four telephone numbers. This argument is made in the face of a clear description of the four telephones including a diagram of their location. This is no more than a clerical error and is entirely without substance.

[7] We likewise find no deficiency from the standpoint of probable cause, particularity as to description of the conversations to be intercepted, or the duration of the intrusion. The Act also requires a showing of need for the interceptions and that other investigative procedures appear to be unlikely to succeed. We find that this requirement was met.

[8, 9] The assertion that the government violated § 2518(8)(a) by failing to deliver immediately the recordings of the interceptions to the judge issuing the interception order at the end of the period of the order, is without

merit. There was a delay of fourteen days. There was no showing of prejudice to the defendants in the delay. The purpose of this provision of the statute is to safeguard the recordings from editing or alteration. There was no showing that the integrity of the interceptions was in any way violated. The government accounted for the delay by showing that the recordings remained in the FBI evidence room for seven days and that the additional seven days were used in the preparation of search warrants.

Indeed, we have carefully considered the facts obtaining to the interceptions from beginning to end in light of the requirements of § 2518. There was substantial compliance with the requirements on the part of the government and the authorizing judge.

[10] The last question to be considered is the claim that the application for the interception order was not authorized in accordance with 18 U.S.C.A. § 2516(1). It was represented to the issuing judge that the application had been authorized by Assistant Attorney General Wilson. It developed that it was authorized by the Attorney General. This circumstance did not invalidate the subsequent order authorizing the interceptions. Nor was it invalidated by the failure to advise the issuing judge that Deputy Assistant Attorney General Petersen, in an authorized ministerial act, had signed Wilson's name. United States v. Chavez, 1974, 416 U.S. 562, 94 S.Ct. 1849, 40 L.Ed.2d 380. See also United States v. Bobo, supra, 477 F.2d at 984; United States v. Cox, supra, 462 F.2d at 1297-1300.

We have carefully considered every assignment of error. The appeals are without merit.

Affirmed.

APPENDIX B

IN THE
UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

NO. 71-2948
NO. 71-3192

UNITED STATES OF AMERICA,
Plaintiff-Appellee,

versus

MARTIN SKLAROFF and JESSE SKLAROFF,
Defendants-Appellants.

UNITED STATES OF AMERICA,
Plaintiff-Appellee,

versus

MARTIN SKLAROFF, JESSE SKLAROFF and
BARNEY TILLMAN BERRY,
Defendants-Appellants.

Appeals from the United States District Court
for the Northern District of Georgia

ON PETITION FOR REHEARING

[Filed March 4, 1975]

Before WISDOM, and BELL, Circuit Judges and BREWSTER, District Judge.

PER CURIAM:

IT IS ORDERED that the petition for rehearing on behalf of Martin Sklaroff and Jesse Sklaroff filed in the above entitled and numbered cause be and the same is hereby denied.

APPENDIX C

UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

NO. 71-2948

UNITED STATES OF AMERICA,
Plaintiff-Appellee,

versus

MARTIN SKLAROFF and JESSE SKLAROFF,
Defendants-Appellants.

[Filed March 18, 1975]

ON CONSIDERATION OF THE APPLICATION of the appellants in the above numbered and entitled cause for a stay of the mandate of this Court therein, to enable appellants to apply for and to obtain a writ of certiorari from the Supreme Court of the United States, IT IS ORDERED that the issuance of the mandate of this Court in said cause be, and the same is stayed to and including April 3, 1975, the stay to continue in force until the final disposition of the case by the Supreme Court, provided that within the period above mentioned there shall be filed

with the Clerk of this Court the certificate of the Clerk of the Supreme Court that certiorari petition has been filed.

IT IS FURTHER ORDERED that the Clerk shall issue the mandate upon the filing of a copy of an order of the Supreme Court denying the writ, or upon the expiration of the stay granted herein, unless the above mentioned certificate shall be filed with the Clerk of this Court within that time.

/s/ Griffin B. Bell

UNITED STATES
CIRCUIT JUDGE

APPENDIX D

UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

NO. 71-3192

UNITED STATES OF AMERICA,
Plaintiff-Appellee,

versus

MARTIN SKLAROFF, JESSE SKLAROFF and
BARNEY TILLMAN BERRY,
Defendants-Appellants.

[Filed March 18, 1975]

ON CONSIDERATION OF THE APPLICATION of the Martin Sklaroff and Jesse Sklaroff in the above numbered and entitled cause for a stay of the mandate of this Court therein, to enable Martin Sklaroff and Jesse Sklaroff to apply for and to obtain a writ of certiorari from the Supreme Court of the United States. IT IS ORDERED that the issuance of the mandate of this Court in said cause be, and the same is stayed to and including April 3, 1975, the stay to continue in force until the final disposition of the case by the Supreme Court, provided that within the period above mentioned there shall be filed with the

Clerk of this Court the certificate of the Clerk of the Supreme Court that certiorari petition has been filed. IT IS FURTHER ORDERED that the Clerk shall issue the mandate upon the filing of a copy of an order of the Supreme Court denying the writ, or upon the expiration of the stay granted herein, unless the above mentioned certificate shall be filed with the Clerk of this Court within that time.

/s/ Griffin B. Bell

UNITED STATES
CIRCUIT JUDGE

APPENDIX E

CHAPTER 119 — WIRE INTERCEPTION AND INTERCEPTION OF ORAL COMMUNICATIONS

§ 2510. Definitions

As used in this chapter—

(1) "wire communication" means any communication made in whole or in part through the use of facilities for the transmission of communications by the aid of wire, cable, or other like connection between the point of origin and the point of reception furnished or operated by any person engaged as a common carrier in providing or operating such facilities for the transmission of interstate or foreign communications;

(2) "oral communication" means any oral communication uttered by a person exhibiting an expectation that such communication is not subject to interception under circumstances justifying such expectation;

(3) "State" means any State of the United States, the District of Columbia, the Commonwealth of Puerto Rico, and any territory or possession of the United States;

(4) "intercept" means the aural acquisition of the contents of any wire or oral communication through the use of any electronic, mechanical, or other device.

(5) "electronic, mechanical, or other device" means any device or apparatus which can be used to intercept a wire or oral communication other than—

(a) any telephone or telegraph instrument, equipment or facility, or any component thereof, (i) furnished to the subscriber or user by a communications common carrier in the ordinary course of its business and being used by the subscriber or user in the ordinary course of its business; or (ii) being used by a communications common carrier in the ordinary course of its business, or by an investigative or law enforcement officer in the ordinary course of his duties;

(b) a hearing aid or similar device being used to correct subnormal hearing to not better than normal;

(6) "person" means any employee, or agent of the United States or any State or political subdivision thereof, and any individual, partnership, association, joint stock company, trust, or corporation;

(7) "Investigative or law enforcement officer" means any officer of the United States or of a State or political subdivision thereof, who is empowered by law to conduct investigations of or to make arrests for offenses enumerated in this chapter, and any attorney authorized by law to prosecute or participate in the prosecution of such offenses;

(8) "contents", when used with respect to any wire or oral communication, includes any information concerning the identity of the parties to such communication or the existence, substance, purport, or meaning of that communication;

(9) "Judge of competent jurisdiction" means—

(a) a judge of a United States district court or a United States court of appeals; and

(b) a judge of any court of general criminal jurisdiction of a State who is authorized by a statute of that State to enter orders authorizing interceptions of wire or oral communications;

(10) "communication common carrier" shall have the same meaning which is given the term "common carrier" by section 153(h) of title 47 of the United States Code; and

(11) "aggrieved person" means a person who was a party to any intercepted wire or oral communication or a person against whom the interception was directed.

Added Pub.L. 90-351, Title III, § 802, June 19, 1968, 82 Stat. 112.

§ 2511. Interception and disclosure of wire or oral communications prohibited

(1) Except as otherwise specifically provided in this chapter any person who—

(a) willfully intercepts, endeavors to intercept, or procures any other person to intercept or endeavor to intercept, any wire or oral communication;

(b) willfully uses, endeavors to use, or procures any other person to use or endeavor to use any elec-

tronic, mechanical, or other device to intercept any oral communication when—

(i) such device is affixed to, or otherwise transmits a signal through, a wire, cable, or other like connection used in wire communication; or

(ii) such device transmits communications by radio, or interferes with the transmission of such communication; or

(iii) such person knows, or has reason to know, that such device or any component thereof has been sent through the mail or transported in interstate or foreign commerce; or

(iv) such use or endeavor to use (A) takes place on the premises of any business or other commercial establishment the operations of which affect interstate or foreign commerce; or (B) obtains or is for the purpose of obtaining information relating to the operation of any business or other commercial establishment the operations of which affect interstate or foreign commerce; or

(v) such person acts in the District of Columbia, the Commonwealth of Puerto Rico, or any territory or possession of the United States;

(c) willfully discloses, or endeavors to disclose, to any other person the contents of any wire or oral communication, knowing or having reason to know that the information was obtained through the interception of a wire or oral communication in violation of this subsection; or

(d) willfully uses, or endeavors to use, the contents of any wire or oral communication, knowing or having reason to know that the information was obtained through the interception of a wire or oral communication in violation of this subsection;

shall be fined not more than $10,000 or imprisoned not more than five years, or both.

(2)(a) It shall not be unlawful under this chapter for an operator of a switchboard, or an officer, employee, or agent of any communication common carrier, whose facilities are used in the transmission of a wire communication, to intercept, disclose, or use that communication in the normal course of his employment while engaged in any activity which is a necessary incident to the rendition of his service or to the protection of the rights or property of the carrier of such communication: Provided, That said communication common carriers shall not utilize service observing or random monitoring except for mechanical or service quality control checks.

(b) It shall not be unlawful under this chapter for an officer, employee, or agent of the Federal Communications Commission, in the normal course of his employment and in discharge of the monitoring responsibilities exercised by the Commission in the enforcement of chapter 5 of title 47 of the United States Code, to intercept a wire communication, or oral communication transmitted by radio, or to disclose or use the information thereby obtained.

(c) It shall not be unlawful under this chapter for a person acting under color of law to intercept a wire or oral communication, where such person is a party to the com-

munication or one of the parties to the communication has given prior consent to such interception.

(d) It shall not be unlawful under this chapter for a person not acting under color of law to intercept a wire or oral communication where such person is a party to the communication or where one of the parties to the communication has given prior consent to such interception unless such communication is intercepted for the purpose of committing any criminal or tortious act in violation of the Constitution or laws of the United States or of any State or for the purpose of committing any other injurious act.

(3) Nothing contained in this chapter or in section 605 of the Communications Act of 1934 (48 Stat. 1143; 47 U.S.C. 605) shall limit the constitutional power of the President to take such measures as he deems necessary to protect the Nation against actual or potential attack or other hostile acts of a foreign power, to obtain foreign intelligence information deemed essential to the security of the United States, or to protect national security information against foreign intelligence activities. Nor shall anything contained in this chapter be deemed to limit the constitutional power of the President to take such measures as he deems necessary to protect the United States against the overthrow of the Government by force or other unlawful means, or against any other clear and present danger to the structure or existence of the Government. The contents of any wire or oral communication intercepted by authority of the President in the exercise of the foregoing powers may be received in evidence in any trial hearing, or other proceeding only where such interception was reasonable, and shall not be otherwise used or disclosed except as is necessary to implement that power.

Added Pub.L. 90-351, Title III, § 802, June 19, 1968, 82 Stat. 213.

§ 2512. Manufacture, distribution, possession, and advertising of wire or oral communication intercepting devices prohibited

(1) Except as otherwise specifically provided in this chapter, any person who willfully—

(a) sends through the mail, or sends or carries in interstate or foreign commerce, any electronic, mechanical, or other device, knowing or having reason to know that the design of such device renders it primarily useful for the purpose of the surreptitious interception of wire or oral communications;

(b) manufactures, assembles, possesses, or sells any electronic, mechanical, or other device, knowing or having reason to know that the design of such device renders it primarily useful for the purpose of the surreptitious interception of wire or oral communications, and that such device or any component thereof has been or will be sent through the mail or transported in interstate or foreign commerce; or

(c) places in any newspaper, magazine, handbill, or other publication any advertisement of—

(i) any electronic, mechanical, or other device knowing or having reason to know that the design of such device renders it primarily useful for the purpose of the surreptitious interception of wire or oral communications; or

(ii) any other electronic, mechanical, or other device, where such advertisement promotes the use of such device for the purpose of the surreptitious interception of wire or oral communications, .

knowing or having reason to know that such advertisement will be sent through the mail or transported in interstate or foreign commerce,

shall be fined not more than $10,000 or imprisoned not more than five years, or both.

(2) It shall not be unlawful under this section for—

(a) a communications common carrier or an officer, agent, or employee of, or a person under contract with, a communications common carrier, in the normal course of the communications common carrier's business, or

(b) an officer, agent, or employee of, or a person under contract with, the United States, a State, or a political subdivision thereof, in the normal course of the activities of the United States, a State, or a political subdivision thereof, to send through the mail, send or carry in interstate or foreign commerce, or manufacture, assemble, possess, or sell any electronic, mechanical, or other device knowing or having reason to know that the design of such device renders it primarily useful for the purpose of the surreptitious interception of wire or oral communications.

Added Pub.L. 90-351, Title III, § 802, June 19, 1968, 82 Stat. 214.

§ 2514. Immunity of witnesses

Whenever in the judgment of a United States attorney the testimony of any witness, or the production of books, papers, or other evidence by any witness, in any case or proceeding before any grand jury or court of the United States involving any violation of this chapter or any of the offenses enumerated in section 2516, or any conspiracy to violate this chapter or any of the offenses enumerated in section 2516 is necessary to the public interest, such United States attorney, upon the approval of the Attorney General, shall make application to the court that the witness shall be instructed to testify or produce evidence subject to the provisions of this section, and upon order of the court such witness shall not be excused from testifying or from producing books, papers, or other evidence on the ground that the testimnoy or evidence required of him may tend to incriminate him or subject him to a penalty or forfeiture. No such witness shall be prosecuted or subjected to any penalty or forfeiture for or on account of any transaction, matter or thing concerning which he is compelled, after having claimed his privilege against self-incrimination, to testify or produce evidence, nor shall testimony so compelled be used as evidence in any criminal proceeding (except in a proceeding described in the next sentence) against him in any court. No witness shall be exempt under this section from prosecution for perjury or contempt committed while giving testimony or producing evidence under compulsion as provided in this section.

Added Pub.L. 90-351, Title III, § 802, June 19, 1968, 82 Stat. 216.

§ 2515. Prohibition of use as evidence of intercepted wire or oral communications

Whenever any wire or oral communication has been intercepted, no part of the contents of such communication and no evidence derived therefrom may be received in evidence in any trial, hearing, or other proceeding in or before any court, grand jury, department, officer, agency, regulatory body, legislative committee, or other authority of the United States, a State, or a political subdivision thereof if the disclosure of that informtion would be in violation of this chapter.

Added Pub.L. 90-351, Title III, § 802, June 19, 1968, 82 Stat. 216.

§ 2516. Authorization for interception of wire or oral communications

(1) The Attornay General, or any Assistant Attorney General specially designated by the Attorney General, may authorize an application to a Federal judge of competent jurisdiction for, and such judge may grant in conformity with section 2518 of this chapter an order authorizing or approving the interception of wire or oral communications by the Federal Bureau of Investigation, or a Federal agency having responsibility for the investigation of the offense as to which the application is made, when such interception may provide or has provided evidence of—

(a) any offense punishable by death or by imprisonment for more than one year under sections 2274 through 2277 of title 42 of the United States Code (relating to the enforcement of the Atomic Energy

Act of 1954), or under the following chapters of this title: chapter 37 (relating to espionage), chapter 105 (relating to sabotage), chapter 115 (relating to treason), or chapter 102 (relating to riots);

(b) a violation of section 186 or section 501(c) of title 29, United States Code (dealing with restrictions on payments and loans to labor organizations), or any offense which involves murder, kidnapping, robbery, or extortion, and which is punishable under this title;

(c) any offense which is punishable under the following sections of this title: section 201 (bribery of public officials and witnesses), section 224 (bribery in sporting contests), section 1084 (transmission of wagering information), section 1503 (influencing or injuring an officer, juror, or witness generally), section 1510 (obstruction of criminal investigations), section 1751 (Presidential assassinations, kidnapping, and assault), section 1951 (interference with commerce by threats or violence), section 1952 (interstate and foreign travel or transportation in aid of racketeering enterprises), section 1954 (offer, acceptance, or solicitation to influence operations of employee benefit plan), section 659 (theft from interstate shipment), section 664 (embezzlement from pension and welfare funds), or sections 2314 and 2315 (interstate transportation or stolen property);

(d) any offense involving counterfeiting punishable under section 471, 472, or 473 of this title;

(e) any offense invloving bankruptcy fraud or the manufacture, importation, receiving, concealment,

buying, selling, or otherwise dealing in narcotic drugs, marihuana, or other dangerous drugs, punishable under any law of the United States;

(f) any offense including extortionate credit transactions under sections 892, 893, or 894 of this title; or

(g) any conspiracy to commit any of the foregoing offenses.

(2) The principal prosecuting attorney of any State, or the principal prosecuting attorney of any political subdivision thereof, if such attorney is authorized by a statute of that State to make application to a State court judge of competent jurisdiction for an order authorizing or approving the interception of wire or oral communications, may apply to such judge for, and such judge may grant in conformity with section 2518 of this chapter and with the applicable State statute an order authorizing, or approving the interception of wire or oral communications by investigative or law enforcement officers having responsibility for the investigation of the offense as to which the application is made, when such interception may provide or has provided evidence of the commission of the offense of murder, kidnapping, gambling, robbery, bribery, extortion, or dealing in narcotic drugs, marihuana or other dangerous drugs, or other crime dangerous to life, limb, or property, and punishable by imprisonment for more than one year, designated in any applicable State statute authorizing such interception, or any conspiracy to commit any of the foregoing offenses.

Added Pub.L. 90-351, Title III, § 802, June 19, 1968, 82 Stat. 216

§ 2517. Authorization for disclosure and use of intercepted wire or oral communications

(1) Any investigative or law enforcement officer who, by any means authorized by this chapter, has obtained knowledge of the contents of any wire or oral communication, or evidence derived therefrom, may disclose such contents to another investigative or law enforcement officer to the extent that such disclosure is appropriate to the proper performance of the official duties of the officer making or receiving the disclosure.

(2) Any investigative or law enforcement officer who, by any means authorized by this chapter, has obtained knowledge of the contents of any wire or oral communication or evidence derived therefrom may use such contents to the extent such use is appropriate to the proper performance of his official duties.

(3) Any person who has received, by any means authorized by this chapter, any information concerning a wire or oral communication, or evidence derived therefrom intercepted in accordance with the provisions of this chapter may disclose the contents of that communication or such derivative evidence while giving testimony under oath or affirmation in any criminal proceeding in any court of the United States or of any State or in any Federal or State grand jury proceeding.

(4) No otherwise privileged wire or oral communication intercepted in accordance with, or in violation of, the provisions of this chapter shall lose its privileged character.

(5) When an investigative or law enforcement officer, while engaged in intercepting wire or oral communications in the manner authorized herein, intercepts wire or oral communications relating to offenses other than those specified in the order of authorization or approval, the contents thereof, and evidence derived therefrom, may be disclosed or used as provided in subsections (1) and (2) of this section. Such contents and any evidence derived therefrom may be used under subsection (3) of this section when authorized or approved by a judge of competent jurisdiction where such judge finds on subsequent application that the contents were otherwise intercepted in accordance with the provisions of this chapter. Such application shall be made as soon as practicable.

Added Pub.L. 90-351, Title III, § 802, June 19, 1968, 82 Stat. 217.

§ 2518. Procedure for interception of wire or oral communications

(1) Each application for an order authorizing or approving the interception of a wire or oral communication shall be made in writing upon oath or affirmation to a judge of competent jurisdiction and shall state the applicant's authority to make such application. Each application shall include the following information:

(a) the identity of the investigative or law enforcement officer making the application, and the officer authorizing the application;

(b) a full and complete statement of the facts and circumstances relied upon by the applicant, to justify

his belief that an order should be issued, including (i) details as to the particular offense that has been, is being, or is about to be committed, (ii) a particular description of the nature and location of the facilities from which or the place where the communication is to be intercepted, (iii) a particular description of the type of communications sought to be intercepted, (iv) the identity of the person, if known, committing the offense and whose communications are to be intercepted;

(c) a full and complete statement as to whether or not other investigative procedures have been tried and failed or why they reasonably appear to be unlikely to succeed if tried or to be too dangerous;

(d) a statement of the period of time for which the interception is required to be maintained. If the nature of the investigation is such that the authorization for interception should not automatically terminate when the described type of communication has been first obtained, a particular description of facts establishing probable cause to believe that additional communications of the same type will occur thereafter;

(e) a full and complete statement of the facts concerning all previous applications known to the individual authorizing and making the application, made to any judge for authorization to intercept, or for approval of interceptions of, wire or oral communications involving any of the same persons, facilities or places specified in the application, and the action taken by the judge on each such application; and

(f) where the application is for the extension of an order, a statement setting forth the results thus far obtained from the interception, or a reasonable explanation of the failure to obtain such results.

(2) The judge may require the applicant to furnish additional testimony or documentary evidence in support of the application.

(3) Upon such application the judge may enter an ex parte order, as requested or as modified, authorizing or approving interception of wire or oral communications within the territorial jurisdiction of the court in which the judge is sitting, if the judge determines on the basis of the facts submitted by the applicant that—

(a) there is probable cause for belief that an individual is committing, has committed, or is about to commit a particular offense enumerated in section 2516 of this chapter;

(b) there is probable cause for belief that particular communications concerning that offense will be obtained through such interception;

(c) normal investigative procedures have been tried and have failed or reasonably appear to be unlikely to succeed if tried or to be too dangerous;

(d) there is probable cause for belief that the facilities from which, or the place where, the wire or oral communications are to be intercepted are being used, or are about to be used, in connection with the commission of such offense, or are leased to, listed in the name of, or commonly used by such person.

(4) Each order authorizing or approving the interception of any wire or oral communication shall specify—

(a) the identity of the person, if known, whose communications are to be intercepted;

(b) the nature and location of the communications facilities as to which, or the place where, authority to intercept is granted;

(c) a particular description of the type of communication sought to be intercepted, and a statement of the particular offense to which it relates;

(d) the identity of the agency authorized to intercept the communications, and of the person authorizing the application; and

(e) the period of time during such interception is authorized, including a statement as to whether or not the interception shall automatically terminate when the described communications has been first obtained.

(5) No order entered under this section may authorize or approve the interception of any wire or oral communication for any period longer than is necessary to achieve the objective of the authorization, nor in any event longer than thirty days. Extensions of an order may be granted, but only upon application for an extension made in accordance with subsection (1) of this section and the court making the findings required by subsection (3) of this section. The period of extension shall be no longer than the authorizing judge deems necessary to achieve the pur-

poses for which it was granted and in no event for longer than thirty days. Every order and extension thereof shall contain a provision that the authorization to intercept shall be executed as soon as practicable, shall be conducted in such a way as to minimize the interception of communications not otherwise subject to interception under this chapter, and must terminate upon attainment of the authorized objective, or in any event in thirty days.

(6) Whenever an order authorizing interception is entered pursuant to this chapter, the order may require reports to be made to the judge who issued the order showing what progress has been made toward achievement of the authorized objective and the need for continued interception. Such reports shall be made at such intervals as the judge may require.

(7) Notwithstanding any other provision of this chapter, any investigative or law enforcement officer, specially designated by the Attorney General or by the principal prosecuting attorney of any State or subdivision thereof acting pursuant to a statute of that State, who reasonably determines that—

(a) an emergency situation exists with respect to conspiratorial activities threatening the national security interest or to conspiratorial activities characteristic of organized crime that requires a wire or oral communication to be intercepted before an order authorizing such interception can with due diligence be obtained, and

(b) there are grounds upon which an order could be entered under this chapter to authorize such interception,

may intercept such wire or oral communication if an application for an order approving the interception is made in accordance with this section within forty-eight hours after the interception has occurred, or begins to occur. In the absence of an order, such interception shall immediately terminate when the communication sought is obtained or when the application for the order is denied, whichever is earlier. In the event such application for approval is denied, or in any other case where the interception is terminated without an order having been issued, the contents of any wire or oral communication intercepted shall be treated as having been obtained in violation of this chapter, and an inventory shall be served as provided for in subsection (d) of this section on the person named in the application.

(8)(a) The contents of any wire or oral communication intercepted by any means authorized by this chapter shall, if possible, be recorded on tape or wire or other comparable device. The recording of the contents of any wire or oral communication under this subsection shall be done in such way as will protect the recording from editing or other alterations. Immediately upon the expiration of the period of the order, or extensions thereof, such recordings shall be made available to the judge issuing such order and sealed under his directions. Custody of the recordings shall be wherever the judge orders. They shall not be destroyed except upon an order of the issuing or denying judge and in any event shall be kept for ten years. Duplicate recordings may be made for use or disclosure

pursuant to the provisions of subsections (1) and (2) of section 2517 of this chapter for investigations. The presence of the seal provided for by this subsection, or a satisfactory explanation for the absence thereof, shall be a prerequisite for the use or disclosure of the contents of any wire or oral communication or evidence derived therefrom under subsection (3) of section 2517.

(b) Applications made and orders granted under this chapter shall be sealed by the judge. Custody of the applications and orders shall be wherever the judge directs. Such applications and orders shall be disclosed only upon a showing of good cause before a judge of competent jurisdiction and shall not be destroyed except on order of the issuing or denying judge, and in any event shall be kept for ten years.

(c) Any violation of the provisions of this subsection may be punished as contempt of the issuing or denying judge.

(d) Within a reasonable time but not later than ninety days after the filing of an application for an order of approval under section 2518(7) (b) which is denied or the termination of the period of an order or extensions thereof, the issuing or denying judge shall cause to be served, on the persons named in the order or the application, and such other parties to intercepted communications as the judge may determine in his discretion that is in the interest of justice, an inventory which shall include notice of—

(1) the fact of the entry of the order or the application;

(2) the date of the entry and the period of authorized, approved or disapproved interception, or the denial of the application; and

(3) the fact that during the period wire or oral communications were or were not intercepted.

The judge, upon the filing of a motion, may in his discretion make available to such person or his counsel for inspection such portions of the intercepted communications, applications and orders as the judge determines to be in the interest of justice. On an ex parte showing of good cause to a judge of competent jurisdiction the serving of the inventory required by this subsection may be postponed.

(9) The contents of any intercepted wire or oral communication or evidence derived therefrom shall not be received in evidence or otherwise disclosed in any trial, hearing, or other proceeding in a Federal or State court unless each party, not less than ten days before the trial, hearing, or proceeding, has been furnished with a copy of the court order, and accompanying application, under which the interception was authorized or approved. This ten-day period may be waived by the judge if he finds that it was not possible to furnish the party with the above information ten days before the trial, hearing, or proceeding and that the party will not be prejudiced by the delay in receiving such information.

(10)(a) Any aggrieved person in any trial, hearing, or proceeding in or before any court, department, officer, agency, regulatory body, or other authority of the United States, a State, or a political subdivision thereof, may move

to suppress the contents of any intercepted wire or oral communication, or evidence derived therefrom, on the grounds that—

(i) the communication was unlawfully intercepted;

(ii) the order of authorization or approval under which it was intercepted is insufficient on its face; or

(iii) the interception was not made in conformity with the order of authorization or approval.

Such motion shall be made before the trial, hearing, or proceeding unless there was no opportunity to make such motion or the person was not aware of the grounds of the motion. If the motion is granted, the contents of the intercepted wire or oral communication, or evidence derived therefrom, shall be treated as having been obtained in violation of this chapter. The judge, upon the filing of such motion by the aggrieved person, may in his discretion make available to the aggrieved person or his counsel for inspection such portions of the intercepted communication or evidence derived therefrom as the judge determines to be in the interests of justice.

(b) In addition to any other right to appeal, the United States shall have the right to appeal from an order granting a motion to suppress made under paragraph (a) of this subsection, or the denial of an application for an order of approval, if the United States attorney shall certify to the judge or other official granting such motion or denying such application that the appeal is not taken for purposes of delay. Such appeal shall be taken within thirty days after the date the order was entered and shall be diligently prosecuted.

Added Pub.L 90-351, Title III, § 802, June 19, 1968, 82 Stat. 218.

§ 2519. Reports concerning intercepted wire or oral communications

(1) Within thirty days after the expiration of an order (or each extension thereof) entered under section 2518, or the denial of an order approving an interception, the issuing or denying judge shall report to the Administrative Office of the United States Courts—

(a) the fact that an order or extension was applied for;

(b) the kind of order or extension applied for;

(c) the fact that the order or extension was granted as applied for, was modified, or was denied;

(d) the period of interceptions authorized by the order, and the number and duration of any extensions of the order;

(e) the offense specified in the order or application, or extension of an order;

(f) the identity of the applying investigative or law enforcement officer and agency making the application and the person authorizing the application; and

(g) the nature of the facilities from which or the place where communications were to be intercepted.

(2) In January of each year the Attorney General, an Assistant Attorney General specially designated by the Attorney General, or the principal prosecuting attorney of a State, or the principal prosecuting attorney for any political subdivision of a State, shall report to the Administrative Office of the United States Courts—

(a) the information required by paragraphs (a) through (g) of subsection (1) of this section with respect to each application for an order or extension made during the preceding calendar year;

(b) a general description of the interceptions made under such order or extension, including (i) the approximate nature and frequency of incriminating communications intercepted, (ii) the approximate nature and frequency of other communications intercepted, (iii) the approximate number of persons whose communications were intercepted, and (iv) the approximate nature, amount, and cost of the manpower and other resources used in the interceptions;

(c) the number of arrests resulting from interceptions made under such order or extension, and the offenses for which arrests were made;

(d) the number of trials resulting from such interceptions;

(e) the number of motions to suppress made with respect to such interceptions, and the number granted or denied;

(f) the number of convictions resulting from such interceptions and the offenses for which the convictions were obtained and a general assessment of the importance of the interceptions; and

(g) the information required by paragraphs (b) through (f) of this subsection with respect to orders or extensions obtained in a preceding calendar year.

(3) In April of each year the Director of the Administrative Office of the United States Courts shall transmit to the Congress a full and complete report concerning the number of applications for orders authorizing or approving the interception of wire or oral communications and the number of orders and extensions granted or denied during the preceding calendar year. Such report shall include a summary and analysis of the data required to be filed with the Administrative Office by subsections (1) and (2) of this section. The Director of the Administrative Office of the United States Courts is authorized to issue binding regulations dealing with the content and form of the reports required to be filed by subsections (1) and (2) of this section.

Added Pub.L. 90-351, Title III, § 802, June 19, 1968, 82 Stat. 222.

§ 2520. Recovery of civil damages authorized

Any person whose wire or oral communication is intercepted, disclosed, or used in violation of this chapter shall (1) have a civil cause of action against any person to intercept, disclose, or use such communications, and (2) be entitled to recover from any such person—

(a) actual damages but not less than liquidated damages computed at the rate of $100 a day for each day of violation or $1,000, whichever is higher;

(b) punitive damages; and

(c) a reasonable attorney's fee and other litigation costs reasonably incurred.

A good faith reliance on a court order or on the provisions of section 2518(7) of this chapter shall constitute a complete defense to any civil or criminal action brought under this chapter.

Added Pub.L. 90-351, Title III, § 802, June 19, 1968, 82 Stat. 223.